



THE CITY OF NEW YORK
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December 18, 2023

By ECF

Honorable Robert M. Levy
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza, East
Brooklyn, New York 11201

Re: Anthony Holley v. City of New York et al., 23-CV-5982 (OEM) (RML)

Your Honor:

I am a Senior Counsel in the Office of the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and the attorney assigned to represent Defendant City of New York, in the above-referenced matter.¹ Defendant respectfully requests that the Court extend its time to file its anticipated premotion conference letter until February 1, 2024, so that one motion can be made on behalf of all defendants. Defendants also respectfully request that the Court *sua sponte* extend the time for the seven individual Defendant officers—Officer Nadiyah Alexander, Officer Timothy Slevin, Officer Stephen John, Officer Andres Diaz, Officer Anthony Pala, Detective Alex Hojnowski and Sergeant Elaine M. Galvin, to respond to the Complaint.² Plaintiff does not consent to this request because Plaintiff is concerned about the statute of limitations of these claims and further extensions would affect these claims. In addition, as the City will argue that it has not been properly served, this filing in no way waives any defenses the City may have.

I. Relevant Background and Procedural Posture.

By way of background, Plaintiff initiated this action pursuant to 42 U.S.C. § 1983 and various state law claims on August 7, 2023. (See ECF Dkt. No. 1). Plaintiff alleges numerous

¹ This case has been assigned to Assistant Corporation Counsel Seamus O'Connor, who is presently awaiting his results from the July 2023 New York State Bar Exam and is handling this matter under my supervision. Mr. O'Connor may be reached directly at (212) 356-2337 or by email at seoconno@law.nyc.gov.

² Sergeant Roy Rodriguez has not yet been served. (See ECF No. 6.)

causes of action stemming from his arrest on December 22, 2019. (*id.*). On August 8, 2023, the Clerk of Court issued summonses. (See ECF No. 4). Summonses were returned executed for Police Officer Nadiyah S. Alexander, Police Officer Timothy Slevin, Police Officer Stephen John, Police Officer Andres F. Diaz, Police Officer Anthony M. Pala, Detective Alex E. Hojnowski and Sergeant Elaine M. Galvin and the City of New York. Despite the Docket showing the City was served on October 3, 2023 this Office's records do not support that the summons and complaint of this case was served the City, and the City intends to challenge that it was properly served with process. A summons was returned unexecuted regarding Defendant Sergeant Roy Rodriguez on October 30, 2023. (See ECF Dkt. No. 7).

II. Defendants' Request For An Extension of Time Until February 1, 2024.

A. This Office Requires Time to Undergo the Process of Representation

An extension is warranted for a several reasons. First, due to the timing and consequence of Plaintiff's ineffective service, this Office was unaware of this lawsuit until mid-November. This Office has since spent a significant number of resources trying to determine whether the City was properly served, which was necessary before determining whether a motion would be necessary. Second, the City has not yet determined representation with respect to all of the individual defendants because they have not yet received the necessary paperwork required to do so. See *Mercurio v. City of New York*, 758 F.2d 862, 854-65 (2d Cir. 1985) (quoting *Williams v. City of New York*, 64 N.Y.2d 800 (1985)) (decision to represent individual defendants is made by the Corporation Counsel as set forth in state law).³

Relatedly, the requested extension will allow the individual Defendants time to request legal representation through this Office and also formally consent to this Office representing them, to the extent that there are no representation issues. As this Office does not represent any of the individual officers, this request is not made on their behalf; however, in the interest of judicial economy and efficiency, and given the time involved in determining the representation of an employee of NYPD, we hope that the Court may *sua sponte*, extend their time to respond so that they may join in Defendants' motion to dismiss.

B. Additional Time Is Necessary To Interpose a Singular Motion to Dismiss the Complaint On Behalf of the City and All Individually Named Defendants.

Defendants respectfully request until February 1, 2024 to file a single motion to dismiss the Complaint upon completion of the individual defendant's representation determinations. Besides the issues of service, there are several claims that the Defendant believes are time barred and intends to make a motion to that effect. Additionally, to comply with Rule 11 of the Federal Rules of Civil Procedure, the Defendant must properly investigate the Complaint. An extension until February 1, 2024 should provide Defendants sufficient time interpose a singular motion on behalf of all of the individually-named Defendants.

³ Similarly, Sergeant Roy Rodriguez has not yet been served, nor has plaintiff requested additional time pursuant to Fed. R. Civ. P. 4(m) to serve him. (See ECF No. 6).

III. Conclusion.

Therefore, Defendants respectfully request the Court extend their time to respond to the Complaint to February 1, 2024. Defendant also respectfully requests that the Court *sua sponte* extend the time for Defendants Police Officer Nadiyah S. Alexander, Police Officer Timothy Slevin, Police Officer Stephen John, Police Officer Andres F. Diaz, Police Officer Anthony M. Pala, Detective Alex E. Hojnowski and Sergeant Elaine M. Galvin as well to join in the motion.

Thank you for your consideration herein.

Respectfully submitted,

/s/ Joseph Zangrilli

Joseph Zangrilli

Senior Counsel

Special Federal Litigation

Cc: **By ECF**

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